

6 Views of the main party

Contents

	<i>Page</i>
Contents	93
Introduction	94
Views of the enlarged G4F group	94
Background to the reference	94
Rationale for the acquisition	94
Ring-fencing of G4F and WCC activities	95
The formal basis for the separation of G4F and WCC	95
The enlarged group's commercial intentions in the UK	97
G4F's views on the market	97
Barriers to entry	98
Changing risks and rewards in bidding for Home Office contracts—G4F's view	98
Increasing prescription of contract detail by HM Prison Service—G4F's view	99
Remedies	100
The views of WCC	101
The views of Premier Custodial Group Ltd	102

Introduction

6.1. This chapter summarizes the views of G4F given on behalf of itself and TWC which it acquired on 8 March 2002. These views were transmitted to us in various submissions and at hearings which we held with representatives of G4F.

6.2. Separate submissions were received from, and separate hearings held with, WCC and Premier. The views of WCC and Premier are included in this chapter (see paragraph 6.65 et seq). The separate hearing with WCC reflected the fact that although G4F, through TWC, controls 57 per cent of the equity capital of WCC, the latter is a listed company, the balance of whose equity capital is in public hands. It also reflected the special significance of WCC as the company within the enlarged G4F group which represents its correctional arm in the USA and—as a participant in the Premier joint venture with Serco—in its exposure to custodial and other services in the UK via its part ownership of Premier. Since WCC is only a part owner of Premier we took evidence separately from Premier as a corporate entity.

Views of the enlarged G4F group

Background to the reference

6.3. We were told that G4F and TWC both operated in the provision of security, safety and custodial services. TWC's primary focus was in the USA and Latin America whereas G4F's was in Europe. Both groups operated in Australia and South Africa.

6.4. G4F stated that it was listed on the Copenhagen Stock Exchange and that TWC had been listed on the NYSE. WCC was a separately-listed company on the NYSE.

6.5. In the UK the enlarged G4F group is active in the following areas: manned guarding services; consortia for designing, financing, building and running of custodial institutions; and the transportation of prisoners, immigrant detainees and asylum seekers. Both GSL, a G4F subsidiary, and Premier, a 50:50 joint venture between WCC and Serco, are active in the UK custodial and transportation markets.

6.6. However, G4F maintained that detailed ring-fencing structures, formally documented¹ and established for the enlarged G4F group as a necessary precondition of the merger itself, would ensure that the competitive position of G4F and WCC would remain unaltered—and that it would do so both as regards WCC's operations (through Premier) in the UK and also as regards WCC's operations elsewhere.

Rationale for the acquisition

6.7. G4F told us that its primary objective in acquiring TWC had been to enter the security provision markets in North and Latin America where it had virtually no presence and where it believed there was now significant potential for growth.

6.8. G4F had announced the acquisition of TWC to the Copenhagen Stock Exchange on 8 March 2002. TWC was the second largest security services company in the USA and its acquisition fulfilled a major element of G4F's strategy of becoming a truly global operator in the international security market. The acquisition was for cash at a price of \$33 per TWC share, resulting in total consideration payable by G4F of DKK 4.8 billion (\$573 million).

6.9. The acquisition had marked G4F's entry into the \$14 billion US security guarding market, which had become even more attractive recently following the increased focus on security within the USA. TWC had been the second largest provider of security services in the USA and in South America, and had a strong reputation in the marketplace. Revenues of TWC's global security business have grown organically by 11.9 per cent in 2001 to reach DKK 10.0 billion (\$1.2 billion).

6.10. The enlarged G4F group had 205,000 employees in more than 80 countries with a 2001 turnover of DKK 31 billion (\$3.7 billion), excluding discontinued operations and ignoring reserves of WCC,

¹WCC Safeguards Agreement of 7 March 2002 (see Appendix 6.1).

now a separately listed and partly-owned corrections subsidiary of TWC. The transaction was expected to enhance earnings per share both on a pre- and post-goodwill amortization basis in 2002, and G4F's flexibility as regards borrowing would be retained.

6.11. G4F told us that the acquisition should be seen as driven wholly by its desire to find a means of entering the North American and Latin American security markets. It had not, in any sense, been concerned to bring about synergies between its US market position and its European market position. The US market was the sole focus of the acquisition.

6.12. G4F also told us that, in seeking to acquire TWC, it was no part of its strategy to expand G4F's activities in the correctional services sector or to buy more businesses in the UK. Indeed, G4F told us that it would have preferred not to have acquired TWC's shareholding in WCC (and indirectly WCC's interest in Premier). TWC's major shareholders were, however, insistent on a clean and comprehensive exit from all their TWC businesses and, when it became clear that this issue was not negotiable, G4F had reluctantly agreed to acquire TWC's interest in WCC. But it had signalled in its public announcement of the deal that it did not regard itself as a long-term owner of that interest.

Ring-fencing of G4F and WCC activities

6.13. We were told that prior to G4F's acquisition of TWC no common interest or relationship had existed between G4F and any wholly- or majority-owned companies in the TWC group. Moreover, there was no incentive for G4F to do other than compete in the UK, through its UK subsidiary GSL, for each Home Office agency contract as and when it was put out for tender. G4F told us that historically it had never failed (other than in exceptional circumstances) to bid against Premier.

6.14. In G4F's view nothing had changed to alter this competitive position within the enlarged G4F group following the acquisition of TWC. It said that the nature of the arrangements designed to protect the competitive integrity of WCC, and that of Premier as WCC's affiliate in the UK, precluded G4F from acquiring information about, or from influencing, Premier's bidding strategy in the UK.

6.15. G4F told us that it did not intend to retain its shareholding in WCC, which it had bought for some US\$200 million. The foregoing was corroborated by a public statement made by G4F on 9 July 2002 to the effect that it was G4F's intention to sell TWC's stake in WCC at an early date subject to an appropriate price being obtained. G4F stated that, because of a downturn in the markets, the current WCC share price amounted to US\$165 million. [*Details omitted. See note on page iv.*] It was consonant with the stated intention to sell that G4F did not consolidate the results of WCC with its own for accounting purposes.

6.16. G4F had noted Serco's intention to exercise pre-emption rights over WCC's 50 per cent interest in Premier. It understood that Serco alleged that the right had arisen as a result of the change of control of WCC following G4F's acquisition of TWC. [*Details omitted. See note on page iv.*]

6.17. Given the background of the ring-fencing structures within the enlarged G4F group referred to above, and of the publicly announced intention to seek a purchaser for the TWC stake in WCC, G4F said that it had every incentive to ensure that Premier did not cede business to companies, such as GSL, which had been its competitors and would remain competitors notwithstanding G4F's acquisition of TWC.

The formal basis for the separation of G4F and WCC

6.18. G4F stated that it owned, at least for the present, 57 per cent of the voting capital of WCC, with the remaining 43 per cent of WCC's voting capital widely dispersed among public shareholders. The ring-fencing arrangements put in place as part of the merger process to ensure the integrity of continued competition between WCC and its affiliated concerns on the one hand and G4F and its affiliated concerns on the other were specifically designed to preclude G4F, as the majority shareholder in WCC, from influencing, or being party to, the bid strategies of Premier as WCC's vehicle for UK custodial operations. G4F said that the relevant arrangements had been imposed upon G4F as a result of the

operation of legislation, namely the Florida Share Control Statute, which required that G4F obtain the approval of WCC's board before G4F could acquire control of WCC's parent—TWC. This had impacted the terms upon which G4F had acquired TWC.

6.19. In particular, G4F believed that the arrangements had addressed any legitimate concern of WCC and the non-TWC public shareholders in WCC that the enlarged G4F group might concentrate, in the future, on developing its own custodial and transportation services business in the UK and elsewhere through G4F's own subsidiary, GSL, and so scale back or deny resources to the competing custodial businesses hitherto carried on by WCC and its affiliates.

6.20. G4F believed that these concerns had been appropriately addressed because an independent committee of the WCC board (with whom G4F had been obliged to negotiate before the merger could proceed under the Florida statute) had insisted on certain commitments by G4F to maintain the competitive integrity of WCC worldwide as a condition of the WCC board approving the acquisition of TWC. Under the Florida Share Control Statute such approval was required before G4F could acquire any voting or registration rights in the capital of WCC's parent, TWC.

6.21. The relevant safeguards had been set out in a formal agreement which recited that its objective was to preserve the ability of WCC to compete freely with G4F in the interests of WCC minority shareholders. Safeguards in the agreement included that: a majority (seven out of nine) of the WCC board were to be independent of TWC and G4F; G4F was to have only two representatives on the board of WCC and neither was to come from the prison management and related services area of G4F; GSL representatives were not to be WCC directors; G4F representatives were not to serve on the boards of WCC subsidiaries; management reporting was to be directly from WCC executives to the WCC board and not to or via the G4F board; G4F directors on the WCC board would have no access to information on WCC bids, or pricing and confidential competitive information; and any G4F board members in WCC were to execute a separate confidentiality agreement to that end.

6.22. Safeguards for competition were also assured through the interaction between the provisions of the Safeguards Agreement and the terms of the Joint Venture Shareholders Agreements which regulated the joint participation of WCC and Serco in Premier itself. The Joint Venture Agreements (to which G4F was not a party and the terms of which had necessarily been kept confidential from G4F during the negotiation of the merger with TWC) imposed a sanction on whichever of WCC or Serco might seek to block a proposal for Premier to bid for a project in the UK.

6.23. That sanction took the form of excluding the blocking party, and its affiliates, from participating thereafter in any venture in competition with Premier in the UK. Since G4F and its subsidiary GSL had, as a result of the merger, become affiliates of WCC for this purpose G4F had necessarily sought assurances from WCC that circumstances would not arise in which WCC, by blocking a Premier bid for a project, could thereby impose an exclusion from the UK upon GSL under this 'keep out' covenant in the Joint Venture Agreement. G4F had received such assurances and said that it followed therefore that, so far as Premier was concerned, WCC would not exercise its powers as a shareholder to block any bid which Premier's board wished to make. G4F believed therefore that so far as it was concerned, neither G4F nor GSL were under any constraint from bidding for projects in the UK against Premier.

6.24. G4F had required, as stated above, to obtain the consent of WCC to the merger with TWC and the board of WCC had, for its part, been advised that the terms of such consent should be negotiated by a committee of WCC directors, none of whom had any potential conflict of interest arising out of relations with TWC or G4F. Hence the Safeguards Agreement, on the basis of which the necessary consent for WCC had been given, had been negotiated by G4F at arm's length with a committee of independent directors of WCC which had been chaired by a partner in a leading law firm and which in turn had been advised by independent financial advisers.

6.25. G4F stated, therefore, that both GSL and Premier would remain independent competitors on Home Office bids. G4F directors would have no influence over contract bids by Premier (or by WCC itself) for contracts, and would not be permitted access to Premier's bid and pricing information. Moreover, the required reporting lines and decision chains within G4F, WCC and Premier would ensure that there would be no common knowledge or common decision-making which might arguably enable coordinated bidding or accidental exchange of information.

6.26. In this context we asked G4F about Serco's rights in respect of its 50 per cent interest in the Premier Joint Venture. G4F stated that these were subject to the terms of the confidential Joint Venture

Shareholders' Agreement between Serco and WCC which neither G4F nor TWC had seen. G4F was not in a position to protect Serco's commercial interests and did not regard itself as having any responsibility to do so. G4F had reached no agreements with Serco with regard to Premier but it had indicated to WCC that G4F's representatives on the WCC board would support a sale of WCC's interest in Premier to Serco. However, G4F had no control of decision-making in WCC since G4F's representatives were in a minority on the WCC board.

6.27. G4F told us that WCC's remit, within the context of the Wackenhut group, had been to operate and develop custodial services worldwide, in the same way that GSL had custodial services responsibility worldwide within the G4F group. Almost all worldwide custodial services of the TWC group were provided through WCC. TWC concentrated on other areas such as security services. Thus, following the establishment of the Premier Joint Venture between WCC and Serco in 1992, TWC had refrained from developing any independent presence in the UK for the supply of transportation or custodial services.

The enlarged group's commercial intentions in the UK

6.28. G4F told us that it intended to merge the businesses of WUK with the corresponding businesses of GSL and Group 4 Total Security Ltd. WUK was active in immigration, guarding and aviation security. G4F believed that under its ownership WUK would be better supported and could build on its UK success.

6.29. G4F intended to retain WUK's name as a basis to develop the aviation security business and security services at embassies and maritime security. WUK's UK immigration service contracts for transportation and the management of the Immigration Removal Centre at Tinsley House would be transferred to GSL.

6.30. These adjustments to the UK operations fitted with G4F's overall merger objectives. From the outset TWC had been seen by G4F as a company that was acknowledged as a quality provider of services in the USA but which did not have the same reputation outside it. G4F was confident that it could change that situation through applying industry best practice and G4F's management expertise. G4F said that, in any event, it intended not to retain [X] WCC [X] within the G4F group. The intended disposal by G4F of its shareholding in WCC would ensure that competition between GSL and Premier would continue. [*Details omitted. See note on page iv.*]

6.31. As for the enlarged group continuing to fulfil its current obligations to its UK customers, G4F told us that it had given assurances to the Director General of the Prison Service that it would do nothing to impede Premier bidding for all future Prison Service contracts in competition with GSL. Moreover, WCC had also undertaken to the Prison Service that it would be content to permit Premier bids for all Prison Service contracts with appropriate financial support guaranteed by WCC and Serco as its joint shareholders.

G4F's views on the market

6.32. We sought G4F's views on what it considered to be the relevant economic markets in the inquiry. G4F stated that it regarded the limits of the custodial and prisoner and detainee transportation markets as being defined by each individual contract. There were a number of features which led it to this view. There was the high value of the contracts, particularly in the prisons sector. Contracts were also very long term. Contracts for prison management could be for ten years. For prisons procured under PFI, contracts were generally for 25 years. There was only one winner for each prison contract or for each prisoner transportation area contract.

6.33. There were, moreover, very particular individual features within each contract. The requirements for a Category A prison were quite different, for example, from those for a semi-secure reception centre which in turn wholly differed from an immigration removal centre. There could also be regional variations and the latter might affect wage differentials. This meant that, for a potential bidder, each bid process was a significant piece of work that had to address the specific requirements of the individual tender specification.

6.34. G4F believed that these factors had a bearing on any consideration of market concentration and competitiveness in the markets. G4F did not believe that market shares were a satisfactory indicator of market power in such markets. In addition the position of the monopsony purchaser (the Home Office) had to be factored in. G4F said that the Home Office had a great deal of buyer power in terms of shaping the scope and nature of the markets, for example in the way it determined the scope of contract competitions.

6.35. G4F stated that the Home Office could itself also stimulate competition in the markets. As part of each bidding competition there were clarification sessions held at an early stage in the process so that potential bidders could understand what the Home Office required. At the end of the bidding process, there was a debrief. G4F believed therefore that the Home Office as purchaser had the ability through this process to transfer information to potential bidders and level the competitive playing field.

6.36. G4F believed that the Home Office did take account of the share of existing contracts held in judging bids for contracts. The Home Office had a policy to limit contractors' comparative shares of contract awards and it was believed to consider such matters in the overall bid evaluation criteria. The Prison Service was believed to reserve the right to consider the impact of any contract award on the long-term market development of the contractually-managed prison sector. G4F understood that this policy was interpreted at present as being that no one contractor should have more than 40 per cent of privatized prison establishments under its management.

6.37. G4F noted that Home Office policy in the immigration and transportation services' markets appeared to favour having more rather than fewer successful bidders. However, G4F had also noted that Home Office policy in these markets had been to keep the number of final bidders to between three and five: that is, generally to run tenders with low numbers of bidders shortlisted from a longer list of parties at expression of interest or pre-qualification stage.

6.38. When asked about staff guarding, aviation security, alarm response and electronic tagging, G4F said that it viewed all three activities as falling within one market. G4F therefore did not consider that each of these activities constituted separate markets.

Barriers to entry

6.39. We asked G4F for its views on barriers to entry into the transportation and custodial markets in the UK. G4F said that these were markets in which it, and Group 4 (G4) before it, had no previous experience of bids at the time of their original entry. Concerns at that entry stage had revolved around the impact of a contract task on the reputation of the company. Early experiences of privately-managed facilities in the USA had made G4 apprehensive because, inter alia, US correctional policy regimes focused less on rehabilitation activities than did UK custodial practice. G4 was therefore concerned initially about the reputational impact of entering the UK markets.

6.40. G4F's predecessor had needed to gain experience before entering the markets. It had, therefore, employed a number of key personnel who had experience of running prisons in the public sector. It had also subcontracted a number of services to specialist providers. G4F had recognized that a key feature of running a prison was the provision of associated health services. Its approach was not to provide health services as a directly-managed activity but to introduce a healthcare subcontractor. The same approach was applied in the areas of education and of food service.

6.41. G4F believed that, as time had passed, many of the original uncertainties about entering the markets and some of the concerns had diminished. Moreover, within the inputs indicated at the bid stage and in contracts, performance measures had become more specific. It was therefore easier for a new entrant to understand what the requirements were for a successful bid. Given this, however, G4F expressed some surprise that there were not more potential contractors currently interested in the custodial and transportation markets.

Changing risks and rewards in bidding for Home Office contracts—G4F's view

6.42. G4F stated that, initially, a number of difficulties had confronted the private sector when first engaging in the provision of custodial services and secure transportation. There had been uncertainty

regarding the sustainability of the market from a political perspective as, at the time (the early 1990s), the then main opposition party in Parliament had been opposed to the concept of private sector involvement in the provision of custodial services. There was also uncertainty regarding the reaction of public opinion and the media to the involvement of the private sector in areas previously undertaken only by the State and public service employees. There had also been unknown and unquantifiable operating risks for private operators arising out of what was emergent best industry practice in the industry and also out of the need to bring together in a single contract service a range of functions which had previously been undertaken by a variety of agencies.

6.43. Potential bidders had also faced difficulties in assessing operating costs, margins, profitability and levels of operational cost savings likely to be realized by private participants. Moreover, at the time there had been only limited interest from financial institutions in supporting custodial PFI projects. Also there was then a thin market for the insurance of custodial facilities, particularly as regards industry-specific perils such as riot, malicious damage and arson.

6.44. Over the ten years since the introduction of the private sector, however, G4F believed that these obstacles had either decreased or ameliorated. Political and public opinion and media positions relative to private sector involvement had all become clearer. Operating risks had become much reduced following the establishment of accepted working practices and increased prescription by the Home Office in setting tender contract specifications.

6.45. Accordingly there was now greater experience and certainty about operating costs and margins. Improved assessment of risks and rewards had led to improved investment incentives with the result that there were now more willing financing parties and operators, and hence a greater number of credible bidders.

6.46. G4F suggested that these encouragements to the number of potential new entrants choosing to enter the market might have been limited by the tendency of the Home Office to increase the level of risk transfer required with each successive competition in such areas as the introduction and development of performance measures within contracts. Benchmarking partway through PFI contracts had also been introduced as had the passing of some elements of demand risk to contractors and the passing of responsibility for insurance.

Increasing prescription of contract detail by HM Prison Service—G4F's view

6.47. We sought G4F's views on how it believed that the level of detail in the customer's specification of contract requirements had changed over time. G4F stated that when the initiative to contract out prisons was first undertaken, considerable reliance was placed on the prospective contractors to produce their own innovative solutions in areas such as drug strategy, suicide and self-harm procedures, incentives and earned privilege systems and anti-bullying strategies.

6.48. Some of the private contractors' initiatives produced solutions that the Prison Service had been happy to adopt. Suicide strategy was an example. Some of G4F's ideas for suicide and self-harm procedures had been absorbed into the Prison Service's overarching strategy. Thus the use of a suicide and self-harm committee (SASH), together with a full-time SASH coordinator and a care suite for those in crisis, which had been used by G4F for some years, had by 2001 become a new Prison Service strategy.

6.49. All prisons were now expected to follow Prison Service Order 2200, which dealt with procedures to be adopted for suicide and self-harm reduction. Moreover, compliance with the Order was subject to audit. Adverse audit reports could insist upon remedial action, even if further innovations or changes had been introduced which could be seen as beneficial in the area.

6.50. G4F stated that establishments run by the private sector had enjoyed their own recruitment and personnel procedures. However, demands were now increasingly being made on private sector providers to adjust these procedures to mirror more closely those of the Prison Service. Exact criteria were being required on qualifications for recruitment and there was increasing pressure for Prison Service staff to be involved in consultation procedures with contractors linked to personnel matters.

6.51. The Prison Service had found it desirable on occasions to run staff attitude surveys and there was now a suggestion that these should be extended to the staff of private companies. However, this

ignored the fact that company staff were subject to different terms and conditions; had different styles of management; and had different expectations. G4F believed that it was inappropriate for the Prison Service to carry out attitude surveys of the staff of private companies and that decision-making and future planning would be flawed if the different privatized practices were to be taken into account by the Prison Service.

6.52. Overall G4F believed that the Prison Service had become increasingly prescriptive towards contractors and that this had produced a situation where innovation by contractors could be curtailed. It also meant that the Prison Service could eventually cut itself off from a fund of alternative thinking which, as it had itself acknowledged, had played a pivotal part in improving all kinds of prison service delivery over the past few years.

Remedies

6.53. We sought G4F's views on the hypothetical remedies that we had set out in our Issues Statement published on 3 July.

6.54. G4F stated that, in its view, the role of the CC was to investigate and report with regard to the impact of the merger on the public interest in the UK. It was not the role of the CC to assess the impact of a merger outside the UK except in so far as it might have UK consequences or except to the extent that matters taking place outside the UK might have a bearing on UK issues relevant to the CC. Moreover, the CC was not obliged to make recommendations even if it invariably did so in order to remedy the particular effects adverse to the public interest which the CC specified in its report.

6.55. G4F did not accept, therefore, that the consequences suggested in our Issues Statement would result from its acquisition of TWC even if (as it denied) G4F were able to control WCC, and even if (as was not the case) G4F were looking to retain its shareholding in WCC and hence an indirect interest in the Premier joint venture. G4F said, moreover, that certain of the remedies suggested were not capable of delivery given its limited influence over WCC and WCC's limited influence over Premier as a 50:50 joint venture.

6.56. Given that G4F had made public its decision to sell its interest in WCC, and was prepared to give a formal undertaking to that effect to the UK competition authorities whenever appropriate, G4F believed that the actual impact on UK markets was limited to the consequences for competition of its control of the manned guarding and immigration activities of WUK and not WCC or Premier.

6.57. G4F believed that certain of the hypothetical remedies proposed reflected a desire by third parties in the same field to exploit the merger process for their own commercial and financial objectives. G4F further believed that, on any view of the adverse effects in the UK, prohibition of the merger would be wholly disproportionate and involve using the Fair Trading Act 1973 in an extra-territorial context.

6.58. G4F said that it could not deliver on an undertaking to divest WCC's shareholding in Premier since it did not control WCC and had no way to compel WCC to sell. But the disposal of its whole 57 per cent shareholding in WCC, to which G4F had already indicated its willingness to commit and which G4F said would happen regardless of the CC's findings, would carry with it a disposal of the Premier shareholding.

6.59. As regards a disposal of WUK, G4F believed there had to be some doubt as to WUK's viability as an effective competitor if it had to become a stand-alone company. Also a divestment to an existing competitor could raise its own competition issues, while if it were divested along with WCC there would seem to be no synergies or compatibility between either WCC's core activities and WUK's security services on the one hand and the activities of Premier on the other if, as should be assumed, WCC retained its 50 per cent ownership of Premier.

6.60. Divestment of GSL could be delivered by G4F. [*Details omitted. See note on page iv.*] Such a remedy would address any possible UK competition concerns because it would restore the pre-merger situation in the markets and remove any overlap between GSL and Premier.

6.61. Conversely, G4F believed that a separation of Premier from WCC was not deliverable by G4F, or at least not deliverable unless the requirement of the UK competition authorities were to be couched in terms which triggered the obligation on WCC in Clause 1(i) of the Safeguards Agreement to cooperate in implementing particular remedies required by any competition authority. Premier's status was that it was a deadlocked 50:50 joint venture between Serco and WCC. WCC might have a degree of influence over, but it did not control, Premier. As regards Home Office contracts, WCC's assurance that it would vote in support of any Premier bid proposal in the UK effectively left bidding decisions to Serco.

6.62. G4F said that it did not control the decisions of the board of WCC. WCC was a separate listed company and G4F representatives were in the minority on its board. In any event, G4F stated that Premier would almost certainly be entirely independent of G4F and GSL by the end of 2003 as a result of G4F's proposed disposal of its holding in WCC.

6.63. Notwithstanding its willingness to entertain the foregoing divestments, G4F expressed a preference for behavioural remedies over other types of remedies. It considered that behavioural undertakings in terms of a strengthened Safeguards Agreement would meet any possible competition concerns. The principal features of these undertakings could be: obligations under the Safeguards Agreement to apply without the current limitation to three years; the existing obligations of G4F with respect to confidential WCC information to be made reciprocal so that confidential GSL information would be similarly protected; and G4F's undertaking to issue guidelines to all relevant management and employees to ensure their compliance with the extended undertakings.

6.64. G4F took the view that formal behavioural undertakings, agreed under the Act and enforceable in a UK court, would address any competition concerns. G4F was willing to agree undertakings with the OFT. Furthermore, such undertakings were almost invariably published and this would bring the undertakings to the attention of customers and competitors.

The views of WCC

6.65. Although G4F maintained that following the merger WCC would remain a separate competing entity, we regarded the fact of G4F's having a 57 per cent shareholding in WCC to be a sufficient reason to treat WCC's views as those of a second and separate main party. We received a submission from WCC and held a hearing with its President and Chief Operating Officer.

6.66. TWC's correctional (custodial) business had been conducted primarily through WCC. TWC itself had retained a 57 per cent stake in WCC when the latter was floated as a publicly quoted company and the remaining 43 per cent shareholding was (and remained) held by the public. The shares were now traded on the NYSE.

6.67. We were told that WCC provided a comprehensive range of correctional, detention and public sector mental health facility management services, including integrated design, construction and management of correctional, detention and public sector mental health facilities. Besides providing services relating to the security of facilities and the detention and care of inmates, WCC also offered a wide array of in-facility rehabilitative and educational programmes, such as chemical dependency counselling and treatment, basic education and job and life skills training.

6.68. By December 2001, WCC had been awarded contracts to develop and/or manage 57 correctional and detention facilities in the USA, Puerto Rico, Canada, the UK, Australia, New Zealand and South Africa, with a total of over 40,000 beds. It also had contracts for prisoner transportation, correctional healthcare services, mental health services and electronic monitoring.

6.69. WCC told us that for some years, in compliance with US Securities Exchange Commission requirements, it had had a formal Services Agreement with its parent TWC. This covered arm's length provision of services by TWC and included payment to TWC for rental space in TWC's Florida headquarters building made available to WCC. Human resources services, payroll and some accounts functions were also purchased from TWC. Other functions, such as legal services, were provided in-house by WCC itself.

6.70. Following the acquisition of TWC, relations between WCC and the enlarged G4F group had become regulated by the Safeguards Agreement. This agreement was made necessary because Florida

statute law required that if a first company moved to acquire a second company, and the second company was in turn a controlling shareholder of a third company (as was the case between TWC and WCC), the first acquiring company must obtain the consent of the third company to the acquisition of the second company. If such consent were not obtained, the acquiring party could not have voting or registration rights in the shares of the third company. Hence the need had arisen, when G4F sought to acquire TWC, for the independent negotiation of terms on which the WCC board could consent to the change of control of TWC.

6.71. WCC told us that without its joint venture it would have found it more difficult to enter those sectors of the UK market in which Premier was now involved. Indeed the original spur for collaborating with Serco to form Premier was to give WCC a better chance of obtaining Home Office contracts. In this respect the joint venture had been successful. WCC would therefore be most reluctant to sell its share in Premier to Serco. Moreover, if such a remedy were to be contemplated by the CC, WCC would contend that a forced sale of its share of Premier would weaken, rather than strengthen, competition in the UK.

6.72. WCC said that, quite apart from its revenue-earning potential, the Premier joint venture was valuable to it as the vehicle for involving it in the important UK market. WCC believed that the UK had been the most active world market for custodial services recently, particularly as a result of the announcements concerning the proposed facilities for asylum seekers. Although the UK was not as broad or as deep a market as the USA, opportunities in the UK extended over a wide range of activities. WCC was therefore enthusiastic about UK market opportunities and it believed that its UK competitors were similarly encouraged by the UK market's potential. US-based companies not already established in the UK were known by WCC to be actively considering entering the UK market.

6.73. WCC noted that the UK market did not, at present, have a great deal of depth because the Home Office was the only client. But WCC believed that there were a variety of agencies within the Home Office covering several areas. These had provided a way for WCC to broaden the base of its business to include monitoring, transportation and custodial services. The range of the latter had permitted diversification for Premier into secure adult prisons, facilities for juveniles and facilities for immigrants: WCC participated in all three categories. WCC believed that the use of PFI was a particularly attractive feature for companies in the UK market. It had no close equivalent in the USA. The UK was therefore a very important market not only for WCC but also for its competitors throughout the industry, and WCC intended to continue to compete independently in these markets through Premier.

The views of Premier Custodial Group Ltd

6.74. We received evidence from Premier and held hearings with its senior officers. Premier told us that it was a joint venture, owned equally by WCC and Serco. Premier managed five prisons (four of which were DCMF—including HMP Ashfield), an IDC and an STC. It also had two escort contracts, two tagging contracts, and owned a company called Geografix, which made monitoring equipment. In response to the CC's questions, Premier said that the acquisition by G4F of TWC, which had a 57 per cent shareholding in WCC, meant that Premier's customers might not regard it as being separate from G4F and might make decisions accordingly. This could result in customers choosing between Premier and G4F as potential bidders, or awarding contracts on the basis of market share, with Premier and G4F being grouped together. Premier was also aware that its customers might perceive the Safeguards Agreement as insufficient not only to prevent the flow of information from Premier to G4F but also to guarantee the operational performance and the finances of existing contracts and future competition. [

Details omitted. See note on page iv.

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6.75. Premier stated that it had received a letter from WCC indicating that WCC would, in future, approve any bid resolutions put to the Premier board. [

Details omitted. See note on page iv.

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6.76. In Premier's opinion new entry was possible although it accepted that there were a number of barriers to entry. Premier believed new entrants needed to be of sufficient size in order to support the cost

of bidding for the small number of available long-term contracts. This was particularly important in a market in which the incumbents had proven track records and where they could put the information, knowledge and experience they had gained to their advantage. New entrants also needed to consider the risk to their reputation. By entering the less secure end of the market, such as accommodation centres, where the security element was marginal, operators could gain the experience and the necessary track record and work their way up. Premier believed that the increasing specificity of contracts would make entry easier because potential entrants would know precisely what was required of them, although it gave less room for innovation. New entry could also be stimulated by the Home Office as had occurred in Premier's case, or by attracting overseas companies, or by putting out a larger number of contracts.

6.77. [

Details omitted. See note on page iv.

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6.78. [

Details omitted. See note on page iv.

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